of granting credit under the 1968 D.T.A., which only provides relief from the year of assessment 1969 onwards.

I would respectfully agree with the learned judge that both the 1966 and 1968 agreements have not made any provisions for relief in the unusual circumstances in which the appellant has found itself.

Did the learned judge fail to appreciate the distinction at law between income of the basis period for the computation of tax and income for the year of assessment? This ground should be considered together with the one following: that no tax could be imposed for the year of assessment as no source of income or profits and gains were in existence in the year of assessment.

The following passage from the Grounds of Judgment seems to me to be adequate answer to the above grounds:

"As stated earlier on, since the financial year of the respondent ends on September 30, for the year of assessment 1969, the period between October 1, 1967 and September 30, 1968 clearly falls within the basis year of the 1969 year of assessment, and there is no dispute that during that period the respondent had received income from Singapore to the tune of $293,237. Similarly, for the assessment year 1970, the period between October 1, 1968 to December 31, 1968 — the latter being the date when the business of the Singapore permanent establishment ceased operation — comes within the 1970 year of assessment, and there is no dispute also that during this period the respondent received income from Singapore the sum of $109,886. It is common ground that the respondent has been taxed in Singapore in respect of the income of these two periods, and this was done by the Singapore authority under the specific provision of section 35 of the Singapore Income Tax Act because of the cessation of business of the respondent on December 31, 1968. It is relevant to note that the respondent ceased to do business on December 31, 1968 and under section 35A of the Singapore Income Tax Act (Revised — 1970), i.e. under the cessation provisions, for the year of assessment 1968 it was taxed in respect of income derived in 1968 itself. Normally, of course, for the year of assessment 1968 it would be taxed in respect of income derived in 1967, and for the preceding year of assessment (i.e. assessment year 1967) section 35B applies. In my view, the mere fact the respondent has been taxed in Singapore under the cessation provision of the Singapore law should not affect the provisions of the 1966 and 1968 agreements, which for the purpose of computation are based on the year of assessment. Since the respondent ceased to carry on business in Singapore by the end of 1968, I see no justification in law why the Malaysian authorities cannot assess tax under our domestic revenue law for the years of assessment 1969 and 1970."

Learned counsel for the appellant has relied on, *inter alia*, two English authorities — *Brown* v. *National Provident Institution*[2] and *Whelan* v. *Henning*[3] as support for the proposition contained in that latter ground. However, it is clear that those authorities are based on interpretation of the English Income Tax laws, the relevant portions of which I am unable to say correspond with ours, and do not lay down general principles.

Another point which does not come, strictly speaking, within any of the grounds of appeal was also raised, i.e. that under Article XVIII paragraph 1 of the D.T.A. 1968 Singapore law and not Malaysian law should be applicable to Singapore income so that such tax paid in Singapore should be allowed as credit against Malaysian tax chargeable in respect of the same income. This contention again overlooks what has been said before — that any right to be exempted from double taxation (or to be given credit for tax paid) ceases after the year of assessment 1968, so that the D.T.A. 1968 does not apply.

Regarding the alternative issue, the learned trial judge rightly apprehended, I would say with respect, that appellant's contention is that if the Singapore income is taxable in Malaysia, bilateral relief or credit should be given for the years of assessment 1969 and 1970 under Schedule 7 paragraphs 1 to 10 of the Income Tax Act, 1967. I regret however that I cannot agree with him that the D.T.A. 1968 over-rides the provisions of Schedule 7, for that Schedule is not inconsistent with it. "Bilateral credit" under paragraph 16 in Schedule 7 means "credit in respect of foreign tax which, by virtue of any arrangements having effect under section 132, is to be allowed as a credit against Malaysian tax". The "arrangement", in this instance, would be the D.T.A. 1968. My answer to the question posed by this issue is that because of the amendment to Article XXI thereof, which limits the 1966 D.T.A. to the last day of the year of assessment 1968, there can be no extension of the right to bilateral credit, a right which accrues only because of the provisions of Article XVIII of the 1968 D.T.A. to the appellant company whose rights in this matter are governed by the earlier D.T.A. The net result is that the appellant again fails on this issue.

For the reasons given above, I would dismiss this appeal with costs here and in the court below.

Raja Azlan Shah F.J. concurred.

Appeal dismissed.

Solicitors: *Shearn Delamore & Co.*

KETUA PENGARAH KASTAM v. HO KWAN SENG

[F.C. (Gill C.J. (Malaya), Ong Hock Sim and Raja Azlan Shah F.JJ.) June 8, 1977]

[Kuala Lumpur — Federal Court Civil Appeal No. 92 of 1975]

Administrative Law — Cancellation of registration as forwarding agent — Whether rules of natural justice apply — Right to be heard — Whether there was excess of jurisdiction or error of law — Customs Act, 1967, ss. 90(3) and (4).

The respondent, who had been granted permission to transact business as a forwarding agent relating to the import and export of goods, had been convicted of two offences under the Customs Act. The respondent lodged notice of appeal but there was no stay of execution. A senior officer of customs then informed the respondent of his decision to cancel the registration of the forwarding agency. The respondent appealed to the same senior customs officer but was told that his matter had been reconsidered but the earlier decision could not be revoked. The respondent then appealed to the Comptroller-General but the appeal was dismissed. He then applied to the High Court for an order of *certiorari* to quash the decision of the senior officer of customs and the High Court granted the application on the ground that the cancellation was premature as the appeal against the convictions was still pending. The Comptroller-General appealed to the Federal Court.

Held, allowing the appeal: (1) the rule of natural justice that no man may be condemned unheard applies to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial" or "administrative" or whether or not the enabling statute makes provision for a hearing;

(2) in this case the respondent had been given a chance of a fair hearing;

(3) it was within the power of the customs officer to cancel the forwarding agency when the respondent was con-

victed of the two offences under the Customs Act. It would be against the public interest to wait until after the determination of the appeal, especially when there was no stay of execution.

Cases referred to:-

(1) *Leo Hoon Hong* v. *Municipal Commissioners of the Town and Fort of Malacca* [1950] M.L.J. 297.
(2) *Nakhuda Ali* v. *Jayaratne* [1951] A.C. 66.
(3) *University of Ceylon v. Fernando* [1960] 1 All E.R. 631, 638.
(4) *Ridge* v. *Baldwin* [1964] A.C. 40.
(5) *R.* v. *University of Cambridge* (1723), 1 Str. 557.
(6) *Cooper* v. *Wandsworth Board of Works* (1863), 14 C.B.N.S. 180.
(7) *R.* v. *Gaming Board for Great Britain, ex parte Benaim and Khaida* [1970] 2 Q.B. 417.
(8) *Wiseman* v. *Borneman* [1971] A.C. 297.
(9) *Local Government Board* v. *Arlidge* [1915] A.C. 120, 138.
(10) *R.* v. *Secretary of State for Environment* [1976] 3 All E.R. 90, 95.

FEDERAL COURT.

Fong Seng Yee (Senior Federal Counsel) for the appellant.

Morris Edgar (*Inderjit Singh* with him) for the respondent.

Raja Azlan Shah F.J.: Ho Kwan Seng (the "respondent") was the sole proprietor of Oriental Forwarding Agency at Klang. He was granted permission to transact business relating to the import and export of goods by a senior customs officer under section 90(1) of the Customs Act, No. 62 of 1967. As a forwarding agent he was statutorily required to be faithful and incorrupt (section 90(3)).

On April 5, 1972 the respondent was alleged to have committed two offences under the Customs Act, one under section 133(1)(a) and the other under section 135(1)(g). On July 15, 1974 he was convicted and fined $1,000 and $11,530.48 respectively. On July 18, 1974 he lodged notice of appeal. But there was no stay of execution pending appeal. On December 28, 1974 a senior officer of customs wrote a letter to the respondent notifying him of his decision to cancel the registration of the forwarding agency with effect from January 4, 1975 stating as his reason the two convictions. That was done in pursuance of section 90(4) of the Act which reads:

"A senior officer of customs may suspend or cancel any permission granted under this section, if the agent commits any breach of this Act or of any regulation made thereunder or if he fails to comply with any direction given by an officer of customs with regard to the business transacted by the agent."

On January 2, 1975, the respondent appealed to the same customs officer not to cancel the agency as that would have adverse effect on his business as his turnover exceeded $200,000 a month. On January 6, 1975 the said customs officer wrote to the respondent notifying him that he had reconsidered the matter but his earlier decision could not be revoked.

Under section 90(5) of the said Act, the respondent could, within one month from the date on which the decision was notified to him, appeal against the cancellation to the Comptroller-General, whose decision was final. He appealed to the Comptroller-General on December 31, 1974. On January 21, 1975, the Comptroller-General replied, *inter alia*, "sahaya telah mengkaji perkara pembatalan kebenaran kepada Oriental Forwarding Agency menjadi wakil pengimpot-pengimpot di Pelabuhan Kelang dan berpendapat bahawa keputusan pembatalan yang dibuat oleh Penolong Kanan Pengarah Kastom, Pelabuhan Kelang itu adalah wajar, sesuai dan tepat. Tidaklah ada didapati kekurangan dipertimbangannya itu bahkan sekiranya beliau tidak membuat pertimbangan yang demikian beliau mungkin dianggapkan tidak cekap dalam perkhidmatannya."

The respondent successfully applied to the High Court for an order of *certiorari* to quash the decision of the senior officer of customs. The learned judge gave as his reason that the cancellation was premature because the appeal against the convictions were still pending before the court. He therefore held that there was an excess of jurisdiction. He further held that there was an error of law on the face of the record as the excess of jurisdiction was founded on the wrong interpretation of section 90(4) of the Customs Act by the customs officer and the failure of the Comptroller-General to consider that point when dealing with the appeal before him. The learned judge seemed to think that a senior officer of customs could only cancel the agency after the appeal against the convictions had been finally determined.

The Comptroller-General appealed. We allowed the appeal.

The first issue that was raised in the court below was the principles of natural justice, *i.e.*, whether they applied to the machinery to cancel the agency under section 90(4) of the Customs Act. The said Act does not provide any machinery for an inquiry. The learned judge was of the opinion that because the said Act does not provide for an inquiry, he held that the principles of natural justice did not apply. He seemed to have based his reasoning on the analogy of *Leo Hoon Hong* v. *Municipal Commissioners of the Town and Fort of Malacca*[1] which decided that since the Commissioners had authority to cancel the licence *at any time* "... if the licensee has been convicted of any offence against the provisions of the Municipal Ordinance or any bye-laws thereunder...." they could cancel such licence without the formality of an inquiry. With due respect to the learned judge that case was not decided on that line. It was decided on the basis that the cancellation of the licence was done after an inquiry which was lawful. The particular bye-law provided two ways to cancel a licence in a given situation, first, at any time if the licensee was convicted of a municipal offence, secondly, after an inquiry. Before us counsel for the appellant relied on the Privy Council case of *Nakkuda Ali* v. *Jayaratne*[2] for the proposition that the principles of natural justice did not apply to the revocation of licences. On the other hand, counsel for the respondent cited to us the Privy Council case of *University of Ceylon* v. *Fernando*[3] as authority that notwithstanding the absence of any statutory provision for an inquiry, a fair hearing was implicit when a customs officer was exercising his powers of cancellation under the Customs Act.

The principles of natural justice that no man may be judge in his own cause and that no man may be

condemned unheard today play a very prominent role in administrative law, particularly since the House of Lords invigorated them by a strong decision in *Ridge* v. *Baldwin*.[4] The second principle is the rule requiring a fair hearing. This is of central importance because it can be used to construe a whole code of administrative procedural rights. The principle has a long history. One of the most famous cases is *Bentley's* case in 1723, in which it was held that the University of Cambridge could not deprive that great but rebellious scholar of his degrees without hearing his excuses for his misconduct: see *R.* v. *University of Cambridge*.[5] In *Cooper* v. *Wandsworth Board of Works*[6] damages were awarded against a local authority which demolished a building erected without due notification, although they did only what the statute said that they might do in such circumstances. The essence of this and many other such cases is that drastic statutory powers cannot be intended to be exercised unfairly, and that fairness demands at least the opportunity of a hearing. The courts clung to this principle as the powers of government expanded, and applied it frequently in many fields such as housing law, compulsory purchase of land and dismissal from public offices. In one case the Court of Appeal has made it clear that the right to a fair hearing applies generally in licensing cases and in particular to an application for a licence for a gaming club: see *R.* v. *Gaming Board for Great Britain, ex parte Benaim and Khaida*.[7] In that case the licensing authority had a legal duty arising purely from implication of law, to explain to the applicants what objections they had to meet and to give them a fair opportunity to meet them. The cases show that a fair hearing is required as a "rule of universal application", "founded on the plainest principles of justice." In particular, the silence of the statute affords no argument for excluding the rule, for the "justice of the common law will supply the omission of the legislature." These quotations are derived from the case of *Cooper* v. *Wandsworth Board of Works, supra,* which has several times recently been approved by the House of Lords as expressing the principle in its full width: see *Ridge* v. *Baldwin, supra; Wiseman* v. *Borneman*.[8]

In my opinion, the rule of natural justice that no man may be condemned unheard should apply to every case where an individual is adversely affected by an administrative action, no matter whether it is labelled "judicial", "quasi-judicial", or "administrative" or whether or not the enabling statute makes provision for a hearing. But the hearing may take many forms and strict insistence upon an inexorable right to the traditional courtroom procedure can lead to a virtual administrative breakdown. That is because a formal hearing is too slow, too technical and too costly. Lord Shaw's caveat on administrative adjudication that "judicial methods may ... be entirely unsuitable, and produce delays, expenses, and public and private injury" is too well-known to be sidestepped: see *Local Government Board* v. *Arlidge*.[9] In the last analysis, it depends on the subject-matter. The great need is to deal efficiently and fairly, rather than to preserve all the accoutrements of the courtroom; the considerations of basic fairness are paramount. A passage from the judgment of Lord Denning M.R. in *R.* v. *Gaming Board for Great Britain, ex parte Benaim and Khaida, supra,* is apt:

> "It is not possible to lay down rigid rules as to when the principles of natural justice are to apply: nor as to their scope and extent. Everything depends on the subject-matter: see what Tucker L.J. said in *Russell* v. *Norfolk (Duke of)* [1949] 1 All E.R. 109, 118 and Lord Upjohn in *Durayappah* v. *Fernando* [1967] 2 A.C. 337, 349. At one time it was said that the principles only apply to judicial proceedings and not to administrative proceedings. That heresy was scotched in *Ridge* v. *Baldwin* [1964] A.C. 40. At another time it was said that the principles do not apply to the grant or revocation of licences. That too is wrong. *Reg* v. *Metropolitan Police Commissioner, Ex parte Parker* [1953] 1 W.L.R. 1150 and *Nakkuda Ali* v. *Jayaratne* [1951] A.C. 66 are no longer authority for any such proposition. See what Lord Reid and Lord Hodson said about them in *Ridge* v. *Baldwin* [1964] A.C. 40, 77-79, 133."

And in the following passage he said this:

> "It follows, I think, that the board have a duty to act fairly. They must give the applicant an opportunity of satisfying them of the matters specified in the sub-section. They must let him know what their impressions are so that he can disabuse them. But I do not think that they need quote chapter and verse against him as if they were dismissing him from an office, as in *Ridge* v. *Baldwin* [1964] A.C. 40; or depriving him of his property, as in *Cooper* v. *Wandsworth Board of Works* (1863) 14 C.B.N.S. 180."

Tested by those rules, and applying them to this case, I think that the senior officer of customs acted with complete fairness. He put it before the respondent in his letter of December 28, 1974 the information that led him to cancel the agency. The respondent did not challenge it but appealed to the same customs officer to reconsider his decision which he did. When he was unsuccessful he took his case further and appealed to the Comptroller-General who reconsidered the matter and gave a decision. It cannot be said the respondent was not given a chance of a fair hearing. On occasions such as this, representation in writing would be all that was required and the fact that a personal hearing was not demanded was a relevant consideration. Here again the conduct of the respondent was relevant. If he did not ask for legal representation, and I doubt very much if he was entitled to it, then this might disbar him from complaint.

In this connection, it is well to remember the distinction between a judicial decision and an administrative decision. In the former the rights of the parties are in issue; the public interest is irrelevant. In the latter the public interest plays an important part. The point is, to what extent are private interests to be subordinated to the public interest: see *R.* v. *Secretary of State for Environment*.[10] Forwarding agents appointed under the Customs Act are required to be honest and incorrupt in their dealings with the public as well as with the administration. The customs administration is there to protect the public interest, to see that persons running a forwarding agency are fit to be trusted. It would be contrary to the public interest to allow a convicted person to run a forwarding agency.

The second and third issues adumbrated in the court below and before us were excess of jurisdiction and error of law on the face of the record. These were dealt with together. It was contended that the learned judge was wrong in his reasoning that it was

premature to cancel the agency when the appeal was pending before the court. The question is whether there was excess of jurisdiction. In this context "jurisdiction" merely means legal authority or power. Had the customs officer the power to cancel the agency if the agent "commits" a breach of the Customs Act? In this context "commits" means "convicted". Giving the word that meaning, I can say with confidence that it is only if an agent is convicted of an offence under the Customs Act that his agency is liable to be suspended or cancelled. I think it is against the public interest to wait after the final determination of an appeal to cancel the agency, especially when there is no stay of execution. In the circumstances I conclude that it was within the power of the customs officer to cancel the agency when the respondent was convicted of the two offences under the Customs Act. There was therefore no excess of jurisdiction. There was also no error of law on the face of the record because the customs officer had not misconstrued the law.

Gill C.J. (Malaya) and **Ong Hock Sim F.J.** concurred.

Appeal allowed.

Solicitors: *Morris Edgar & Co.*

DATUK HAJI HARUN BIN HAJI IDRIS v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Ali Hassan and Wan Suleiman F.JJ.) March 21 to 25, 28 to 31, April 1 to 4 and 6, June 10, 1977]

[Kuala Lumpur — Federal Court Criminal Appeal No. 19 of 1976]

Criminal Law and Procedure — Transfer of case from subordinate court to High Court on certificate of Attorney-General — Whether legal — Whether section 418A Criminal Procedure Code ultra vires the Constitution — Corruption — Admission of statement to police — Evidence of other possible offences, wrongly admitted — Evidence of system — Evidence Act, 1950, ss. 15, 24, 29, 54 — Criminal Procedure Code (F.M.S. Cap. 6), ss. 138, 177, 417 and 418A — Federal Constitution, Articles 4(1) and 8.

Bribery and Corruption — Whether accused solicited gratification — Whether gratification was solicited corruptly — Gratification solicited as inducement to obtain approval of application for State land — Whether accused solicited and accepted money corruptly — Whether accused "agent" — Prevention of Corruption Act, 1961, ss. 3, 4 and 9.

Constitutional Law — Legislation giving discretion to Attorney-General to issue certificate for transfer of case from subordinate court to High Court — Whether contrary to Federal Constitution — Right to Equality — Federal Constitution Articles 4(1) and 8.

This was an appeal from the decision of Raja Azlan Shah J. ([1977] 1 M.L.J. 15). The appellant had been convicted on three charges of corruption, in that he as Mentri Besar of Selangor (a) solicited the sum of $250,000 for U.M.N.O. as an inducement to obtain the approval of the Executive Council in respect of an application for a piece of State land; (b) being a member of a public body accepted for U.M.N.O. the sum of $25,000 as inducement to obtain such approval and (c) accepted for U.M.N.O. the sum of $225,000 as an inducement to obtain such approval.

The learned trial judge sentenced the appellant to one year's imprisonment in respect of the first charge and 2 years' imprisonment in respect of each of the second and third charges, all the sentences to run concurrently. He also ordered payment of the sum of $225,000 to U.M.N.O. Selangor. The appellant appealed.

On appeal it was argued (a) that section 418A of the Criminal Procedure Code (under the provisions of which the case of the appellant had been transferred from the subordinate court to the High Court for trial) was inconsistent with Article 8 and therefore unconstitutional and void by virtue of Article 4; (b) that the verdict was not supported by such evidence as was admissible.

Held: (1) section 418A of the Criminal Procedure Code is not discriminatory, as although it uses the words "any particular case" it does not apply specifically to the particular case against the accused. The section applies to all criminal cases triable in a subordinate court;

(2) a preliminary inquiry is not a fundamental right guaranteed by the Constitution; if the accused had been tried in the Sessions Court he would not have had the use of depositions before trial; and at the trial in the High Court he also enjoyed the chance of not being called upon for his defence at the close of the case for the prosecution. By being tried in the High Court he did not run the risk of greater penalty, for if he had been tried in the Sessions Court he would have been liable to the full penalty prescribed by law. In any event the trial in the High Court followed the same rules of procedure and evidence as would have been followed in the Sessions Court and so there was no question of the accused being denied a fair and impartial trial. The accused also had a right of appeal and a provision for appeal, it has been held in the Indian cases, may cure any defect in the law;

(3) even if (contrary to the view of the court) the law may be regarded as discriminatory, there was reasonable classification in it, there was a nexus between it and the object of the law and there was a principle or policy in it to guide the Attorney-General in the exercise of his discretion under section 418A. The Attorney-General when acting under the section 418A will be expected to transfer to the High Court only cases of unusual difficulty or of unusual importance. Sections 417 and 418A of the Criminal Procedure Code are vehicles for the Attorney-General to exercise his power under Article 145(3) of the Federal Constitution and it is for him to judge which case is difficult or important enough to be given an early trial after a transfer to the High Court under section 418A;

(4) it is obvious that the scheme of the amendments to sections 138, 417 and 418A is to expediate trials, and there is an obvious classification, a classification clearly connected with the underlying principle of administration of justice that an alleged criminal should be placed on trial as soon as possible after the commission of the crime as the circumstances of the case would permit and this classification cannot be regarded as unreasonable and not having a nexus with the object of the amendments, namely speedy trial;

(5) the statement made by the appellant to the officer of the National Bureau of Investigation was admissible by virtue of section 15(1) of the Prevention of Corruption Act, 1961, and also by virtue of section 29 of the Evidence Act which provides that if a confession is otherwise admissible, that is, if the court is satisfied that it is made voluntarily, it does not become inadmissible simply because it was made in answer to questions which he need not have answered whatever may have been the form of those questions;

(6) evidence relating to cheques paid by the appellant out of the U.M.N.O. Special Fund to his personal account was wrongly admitted and should not have been used to discredit the accused, but in this case there was, apart from that evidence, enough evidence to support the finding of guilt;

(7) evidence of the receipt of other donations received by the appellant was rightly admitted in evidence to rebut the defence that a voluntary and honest donation had been given in this case;

(8) there was enough evidence to support the conviction as the evidence showed that the appellant did solicit the $250,000 corrupty from the bank as an inducement for the Executive Council to approve the bank's application and that he did accept the two sums corruptly;